THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.22894 of 2004

DATED: 25TH JULY, 2006.

Between :

M/s. Sri Harsha Constructions,
Rep. by its Managing Partner,
Hyderabad. … Petitioner

And

1. The Principal Secretary, R & B Department,
   Hyderabad, and four others. … Respondents

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ORDER :

The petitioner being the successful bidder in the tenders invited for construction of high level bridge across river Pennar at Siddautham at Km 5/0-10 of Bakrapet-Siddautam Road in Kadapa District was awarded the said work vide agreement dated 15-5-2004. It is pleaded that one of the unsuccessful bidders in respect of the said contract filed W.P.No.9113 of 2004 questioning the award of contract in favour of the petitioner. While entertaining the said writ petition, this Court by order dated 1-6-2004, ordered that the contract awarded to the petitioner herein (5th respondent in the said writ petition) shall be subject to further orders. Ultimately, W.P.No.9113 of 2004 was allowed by order dated 5-11-2004 holding that the action of the official respondents in allotting the work to the petitioner herein (5th respondent herein), who was unqualified, was in the teeth of the very terms and conditions of the tender notification. Accordingly, the order dated 15-5-2004 allotting the work in favour of the petitioner herein was set aside. It is not in dispute that the said order has become final. However, even during the pendency of the said writ petition, the contract in favour of the petitioner herein was terminated by the fourth respondent-Executive Engineer, R & B Division, Kadapa District, by proceedings dated 23-9-2004 under Clause-60 (a) of P.S. to A.P.S.S. duly forfeiting all the deposits made with the Department on the ground that the petitioner failed to commence the work in spite of several

reminders.

Though the petitioner did not challenge the order of termination, after the disposal of W.P.No.9113 of 2004 a representation dated 9-11-2004 was made requesting the 2nd respondent to withdraw the order of termination dated 23-9-2004 and close the contract without any liability on either side. The petitioner also made a request to return the Bank guarantees furnished towards security deposits. The respondents did not consider the said request, but, on the other hand, encashed the Bank guarantees furnished by the petitioner through the fifth respondent Bank. Aggrieved by the same, this writ petition is filed seeking a declaration that the action of the fourth respondent in encashing the Bank guarantees to the tune of Rs.11.32 lakhs and Rs.7.34 lakhs is arbitrary and illegal and consequently to direct the fourth respondent to return the Bank guarantees to the petitioner.

On behalf of the respondents, a counter-affidavit has been filed by the Executive Engineer, R & B Division, Kadapa, stating that though the agreement was concluded in favour of the petitioner on 15-5-2004, the petitioner did not evince any interest to start the work and delayed the commencement of the work on one pretext or the other. In the circumstances, the fourth respondent by letter dated 27-8-2004 called upon the petitioner to commence the work within seven days failing which the contract would be terminated. Since the petitioner failed to comply with the same, the Department terminated the contract by proceedings dated 23-9-2004 duly forfeiting the deposits of the petitioner under Clause-60 (a) of P.S. to A.P. Standard Specifications. Consequently, the fourth respondent directed the fifth respondent Bank to encash the Bank guarantees. It is also stated that W.P.No.9113 of 2004 relates to a different work granted under Agreement dated 15-5-2004.

I have heard the learned Counsel for both the parties and perused the material on record.

The learned Counsel for the petitioner vehemently contended that since the contract awarded in favour of the petitioner was declared by this Court as illegal being contrary to the terms and conditions of the tender notification, termination of the very same contract does not arise and therefore the entire action of the respondents including the encashment of Bank guarantees is arbitrary and illegal and consequently the petitioner is entitled for return of Bank guarantees.

On the other hand, the learned Government Pleader appearing for the respondents contended that the writ petition which relates to a dispute arising out of a concluded contract is not maintainable under Article 226 of the Constitution of India. The learned Government Pleader also contended that even on merits the matter does not deserve any consideration since the Bank guarantees have already been encashed.

At the outset, it is to be noted that in this writ petition the petitioner had only sought for a declaration that the action of the respondents in encashing the Bank guarantees is arbitrary and illegal and for a consequential direction to return the Bank guarantees.

The order of termination dated 23-9-2004 is not questioned and admittedly the same has been allowed to become final. The said order of termination was passed forfeiting the deposits in terms of Clause-60 (a) of P.S. to A.P.S.S. much prior to the decision in W.P.No.9113 of 2004. It is also not in dispute that pursuant to the order of termination the Bank guarantees were already encashed and the Demand Drafts were sent to the Pay & Accounts Officer, Telugu Ganga Project, Kadapa by the 5th respondent Bank. Thus, it is clear that the Bank Guarantees were encashed in terms of the terms and conditions of the agreement dated 15-5-2004 entered into between the 4th respondent and the petitioner.

The law is well-settled that if the enforcement of Bank Guarantee is in terms of the guarantee, then the Courts must not interfere. It has been laid down by the Courts in a catena of decisions that the interference of the Court is permissible only where the invocation of Bank guarantee is against the terms of the guarantee or where there is any fraud.

In the case on hand, the encashment of Bank guarantees can neither said to be contrary to the terms of the guarantee much less any element of fraud was involved.

Moreover, it is the specific case of the respondents that the subject-matter of W.P.No.9113 of 2004 was a different work awarded to the petitioner under a different agreement. Nothing has been placed before this Court to disbelieve the said version of the respondents.

Viewed from any angle, the Writ of Mandamus as prayed for cannot be granted and accordingly the Writ Petition is dismissed. However, this shall not preclude the petitioner to work out the appropriate remedy as available under law for redressal of its grievance. No costs.

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G. ROHINI, J.

Dt. 25-7-2006
ghn